79-2051

Supreme Court, U. S.
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# In The Supreme Court of the United States

**OCTOBER TERM, 1979**

**NO. 79-2051**

THE CITY OF APOPKA, FLORIDA, JOHN H. LAND, Mayor of Apopka, ALONZO WILLIAMS, JR., RICHARD MARK, BILL ARROWSMITH, JEANETTE ROBINSON, Councilmen of Apopka, Florida, their successors and agents, in their individual and official capacities,

*Petitioners,*

*vs.*

FAITHY DOWDELL, JOHNNIE MAE SUBBS, BERNICE HENDERSON, BOBBY ANN BARNES, ADDIE SWAIN, MARY BOYKIN, MARY WATSON, WILLIE L. NELSON, EDDIE LEE WYNN, LAFAYETTE DOWDELL, JOHNNIE H. BRIDGES, FREDDIE L. HOWARD, on behalf of themselves and all others similarly situated,

*Respondents.*

## BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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**BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

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## SUMMARY OF ARGUMENT

Widespread ranging affirmative injunctive relief, having the effect of imposing monetary costs on governmental parties to correct systemic deprivations may impose considerable costs on the governmental units, yet requests for such relief do not transform such action into law.

## STATEMENT OF CASE

Patterned after *Hawkins v. Town of Shaw*, 437 F.2d 1286 (5th Cir. 1971), *aff'd en banc* 461 F.2d 1171 (5th Cir. 1972) and *Johnson v. City of Arcadia,* 450 F.Supp. 1383 (M.D. Fla. 1978) Respondents (Plaintiffs) a class of black citizens of Apopka, Florida, initiated this civil rights action pursuant to 42 U.S.C. §1983, *et. seq*, on August 8, 1978. The Complaint[1] charged that the City of Apopka, its Mayor and Councilmen, deprived black citizens of equal municipal services and sought that qualitative and quantitative disparities between various municipal services provided to black and white citizens be eliminated.

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[1]The Complaint challenged racial discrimination in the following services:

a) Paving and maintaining streets;
b) Provision of sewerage facilities;
c) Provision of water;
d) Provision of storm water drainage facilities;
e) Fire protection;
f) Adequacy of street lighting;
g) Park and recreational facilities.

This action was also authorized under 42 U.S.C. §2000(d) (Title VI of the Civil Rights Act of 1964), and 31 U.S.C. §1242 (State and Local Fiscal Assistance Act of 1972, hereinafter "Revenue Sharing Act"). As such, the action additionally sought to enjoin the City of Apopka and its public officers from expending federal funds in a racially discriminatory manner. *See, e.g., United States v. Chicago,* 395 F.Supp. 329 (N.D. Ill. 1975), 405 F.Supp. 480 (N.D. Ill. 1975), 411 F.Supp. 218 (N.D. Ill. 1976), *aff'd* 549 F.2d 415 (7th Cir. 1977).

Respondents have requested specific injunctive action to eliminate past and current racial discrimination by requesting the trial court to implement a capital improvement project in the black residential neighborhood in order to bring municipally provided services to the same qualitative and quantitative level as those enjoyed by white residents. Moreover, to insure an adequate source of money to finance these improvements, Respondents have sought: a) an escrow of all federal revenue sharing funds on hand and to be received in the future by the City of Apopka, Florida and b) an injunction prohibiting any major capital improvement projects in the white residential area of Apopka until services have been equalized in the black residential area.

## ARGUMENT

### AFFIRMATIVE INJUNCTIVE RELIEF WHICH IMPOSES MONETARY COSTS DOES NOT TRANSFORM AN ACTION INTO LAW.

Petitioners' argument, when reduced to its core, is simply that the right to a jury trial is insured whenever a litigant seeks relief which involves mandatory expenditures, since such remedy is essentially a damage award. We believe, as did the trial court (Order of February 25, 1980) (A. 12-18 "Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit" (herein "Petition")) and the Fifth Circuit Court of Appeals (Order of March 24, 1980) (A. 1-3 "Petition") and (Order of May 1, 1980) (A. 4 "Petition") that petitioners are incorrect in this analysis.

Of critical significance, Respondents eschewed an attempt to obtain an award of monetary damages for Petitioners' past unconstitutional practices. *See e.g. Carey v. Pipus,* 435 U.S. 247 (1978) (Damages designed to compensate persons for injuries caused by deprivation of constitutional and statutory rights under 42 U.S.C. §1983) and *Monell v. Dept. of Social Services of the City of New York,* 436 U.S. 658 (1978), (Award of damages for constitutional violations of municipalities). No City *monies* are requested to be paid *to* the injured Respondents. Rather, we seek only the classical and fundamental *equitable* relief — that the City make its black community "whole" by providing municipal services equal to those enjoyed by the white residents of Apopka.

Under Petitioners view of this case, they would require that whenever a Federal Chancellor is requested to implement an equitable remedy which may necessitate the expenditure of monies, the convening of a jury is necessary, as such an action is based in law

rather than equity.[2] Such a conclusion is not only unsupported by the facts and legal theory of this case, but more fundamentally, by §1983-Civil Rights Jurisprudence. *Harkless v. Sweeny Independent School District,* 427 F.2d 319, 324 (5th Cir. 1970), *cert. den.* 400 U.S. 991 (1972).[3] (This Circuit has rejected the view "* * * that the trio of *Beacon Theatres, Dairy Queen* and *Thermo-Stitch* is a catalyst which suddenly converts *any* money request into a claim triable by jury.")

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[2]This distinction — legal or equitable — is of course, critical since the Seventh Amendment guarantees the right to a jury trial in all actions at common *law* where the amount in controversy exceeds twenty dollars. *Curtis v. Loether,* 415 U.S. 189 (1974). There is no requirement that a jury try equitable issues. *Dairy Queen v. Wood,* 369 U.S. 469 (1962).

[3]*Harkless* is one in a series of Circuit decisions which have held that there is no right to trial by jury in actions for back pay and injunctive relief. *See, e.g., Slack v. Havens,* 522 F.2d 1091, 1094 (9th Cir. 1975); *EEOC v. Detroit Edison Co.,* 515 F.2d 301, 308 (6th Cir. 1975), *vacated and remanded on other grounds,* 431 U.S. 951, (1977); *Robinson v. Lorillard Corp.,* 444 F.2d 791, 802 (4th Cir. 1971), *cert. dismissed,* 404 U.S. 1006 (1971); *King v. Laborers Int. Union,* 443 F.2d 273, 279 (6th Cir. 1971) (dicta); and *Johnson v. Georgia Highway Express, Inc.,* 417 F.2d 1122, 1125 (5th Cir. 1969).

There is no functional difference between back pay awards in *Harkless* and escrowed funds used for improvements for municipal services in this case. Each is ". . . an integral part of the *equitable* remedy of injunctive reinstatement." *Harkless,* 427 F.Supp. at 329. Indeed, *Dowdell* presents a case that is even more remote from a remedy of *damages* than *Harkless,* for in *Dowdell,* plaintiffs are not personally receiving any monies from remedial action that the District Court may mandate. Rather, money is to be allocated for service improvements. Unlike *Harkless,* no funds will be paid to plaintiffs' individual pocketbooks.

This Court has never required, nor would the Seventh Amendment comprehend, the convening of a jury in an equitable action solely because relief imposes monetary costs.

## CONCLUSIONS

For the foregoing reasons, and consistent with the trial court and Fifth Circuit Orders, a Writ of Certiorari should not be issued.

Respectfully submitted,

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